

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DONALD STOCKMYER,

Plaintiff,

v.

ADMIRE, KLEPS, CANE, JULIE SMITH,
MICHAEL HOTLHE,

Defendants.

CASE NO. 3:16-CV-05681-RBL-DWC

ORDER DIRECTING SERVICE OF
CIVIL RIGHTS COMPLAINT

This is a civil rights action brought pursuant to 42 U.S.C. § 1983. Plaintiff is proceeding with this action *pro se* and *in forma pauperis*. Plaintiff is currently incarcerated at the Washington State Penitentiary and is subject to the Court's Prisoner E-Filing Initiative pursuant to General Order 06-16. The Court, having reviewed plaintiff's complaint, hereby **ORDERS** as follows:

(1) Service by Clerk

The Clerk is directed to send the following to the named defendants by first class mail: a copy of plaintiff's complaint, a copy of this Order, two copies of the notice of lawsuit and request for waiver of service of summons, a waiver of service of summons, and a return envelope, postage prepaid, addressed to the Clerk's Office.

(2) Response Required

Defendant(s) shall have **thirty (30) days** within which to return the enclosed waiver of service of summons. A defendant who timely returns the signed waiver shall have **sixty (60) days** after the date designated on the notice of lawsuit to file and serve an answer to the complaint or a motion permitted under Rule 12 of the Federal Rules of Civil Procedure.

A defendant who fails to timely return the signed waiver will be personally served with a summons and complaint, and may be required to pay the full costs of such service, pursuant to Rule 4(d)(2) of the Federal Rules of Civil Procedure. A defendant who has been personally served shall file an answer or motion permitted under Rule 12 within **thirty (30) days** after service.

(3) Filing and Service by Parties, Generally

All attorneys admitted to practice before this Court are required to file documents electronically via the Court's CM/ECF system. Counsel are directed to the Court's website, www.wawd.uscourts.gov, for a detailed description of the requirements for filing via CM/ECF. Plaintiff shall file all documents electronically. All filings must indicate in the upper right hand corner the name of the magistrate judge to whom the document is directed.

Any document filed with the Court must be accompanied by proof that it has been served upon all parties that have entered a notice of appearance in the underlying matter. Plaintiffs subject to the Court's E-Filing Initiative shall indicate the date the document is submitted for e-filing as the date of service.

(4) Non-State Defendants

As a registered user of the Court's electronic filing system, you must accept electronic service of all court filings (**except** original service of a complaint) by prisoner litigants housed at

1 facilities actively engaged in the Prisoner E-Filing Initiative. Prisoner litigants incarcerated at
2 facilities actively engaged in the Prisoner E-Filing Initiative are no longer required to serve their
3 court filings on the Court or defendants by mail. Service by mail of your court filings to prison
4 litigants housed in facilities actively engaged in the Prisoner E-Filing Initiative is also no longer
5 required.

6 (5) Motions, Generally

7 Any request for court action shall be set forth in a motion, properly filed and served.
8 Pursuant to LCR 7(b), any argument being offered in support of a motion shall be submitted as a
9 part of the motion itself and not in a separate document. The motion shall include in its caption
10 (immediately below the title of the motion) a designation of the date the motion is to be noted for
11 consideration upon the Court's motion calendar.

12 Stipulated and agreed motions, motions to file over-length motions or briefs, motions for
13 reconsideration, joint submissions pursuant to the option procedure established in LCR 37(a)(2),
14 motions for default, requests for the clerk to enter default judgment, and motions for the court to
15 enter default judgment where the opposing party has not appeared shall be noted for
16 consideration on the day they are filed. *See* LCR 7(d)(1). All other non-dispositive motions
17 shall be noted for consideration no earlier than the third Friday following filing and service of the
18 motion. *See* LCR 7(d)(3). All dispositive motions shall be noted for consideration no earlier
19 than the fourth Friday following filing and service of the motion. *Id.*

20 For electronic filers, all briefs and affidavits in opposition to either a dispositive or non-
21 dispositive motion shall be filed and served not later than 11:59 p.m. on the Monday
22 immediately preceding the date designated for consideration of the motion.
23

1 The party making the motion may electronically file and serve not later than 11:59 p.m.
2 on the date designated for consideration of the motion, a reply to the opposing party's briefs and
3 affidavits.

4 (6) Motions to Dismiss and Motions for Summary Judgment

5 Parties filing motions to dismiss pursuant to Rule 12 of the Federal Rules of Civil
6 Procedure and motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil
7 Procedure should acquaint themselves with those rules. As noted above, these motions shall be
8 noted for consideration no earlier than the fourth Friday following filing and service of the
9 motion.

10 Defendants filing motions to dismiss based on a failure to exhaust or motions for
11 summary judgment are advised that they MUST serve a *Rand* notice concurrently with motions to
12 dismiss based on a failure to exhaust and motions for summary judgment so that *pro se* prisoner
13 plaintiffs will have fair, timely and adequate notice of what is required of them in order to
14 oppose those motions. *Woods v. Carey*, 684 F.3d 934, 941 (9th Cir. 2012). The Ninth Circuit
15 has set forth model language for such notices:

16 A motion for summary judgment under Rule 56 of the Federal Rules of
17 Civil Procedure will, if granted, end your case.

18 Rule 56 tells you what you must do in order to oppose a motion for
19 summary judgment. Generally, summary judgment must be granted when
20 there is no genuine issue of material fact – that is, if there is no real
21 dispute about any fact that would affect the result of your case, the party
22 who asked for summary judgment is entitled to judgment as a matter of
23 law, which will end your case. When a party you are suing makes a
motion for summary judgment that is properly supported by declarations
(or other sworn testimony), you cannot simply rely on what your
complaint says. Instead, **you must set out specific facts in declarations,
depositions, answers to interrogatories, or authenticated documents,
as provided in Rule 56(e), that contradict the facts shown in the
defendant's declarations and documents and show that there is a**

Defendants who fail to file and serve the required *Rand* notice on plaintiff may have their motion stricken from the Court's calendar with leave to re-file.

No direct communication is to take place with the District Judge or Magistrate Judge with regard to this case. All relevant information and papers are to be directed to the Clerk.

Dated this 9th day of August, 2016.

David W. Christel
United States Magistrate Judge